Lim Tiang Hock Vincent v Lee Siew Kim Virginia

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 119 OF 1988
YONG PUNG HOW CJ, THEAN AND CHAO HICK TIN JJ
28 DECEMBER 1990

Family Law — Matrimonial home, sale of — Power of court to order sale of matrimonial property and to divide proceeds of sale between parties — Marriage dissolved — Order made that matrimonial home not be sold until younger child reaches age of 21 — Whether court has duty to exercise power of sale — Women's Charter (Cap 353, 1985 Ed), s 106 — Interpretation Act (Cap 1, 1985 Ed), s 27

The marriage between the parties was dissolved in 1987 on an uncontested petition and by consent the respondent in this appeal was given care, custody and control of the two daughters. The younger daughter was born on 9 September 1982. At a hearing in chambers, the learned judge ordered that the matrimonial home be not sold until the younger daughter reaches the age of 21 years, the effect of which is that the respondent and her children would have exclusive possession and enjoyment of the matrimonial home until 2003. The appellant appealed against this order.

Held, dismissing the grounds of appeal but varying the order of court:

(1) There is nothing in s 106(1) of the Women's Charter which makes it mandatory that the power to order a division of matrimonial assets when granting a decree of divorce, judicial separation or nullity of marriage shall be exercised on the making of the appropriate decree.

(2) Further, by virtue of s 27(1) of the Interpretation Act (Cap 1, 1985 Ed), the court may exercise that power from time to time as occasion requires. The court may defer the exercise of such power to a later date, if the circumstances warrant it.

(3) The court is required under s 106(2) of the Women's Charter to have regard to, inter alia, the debts owing by either party which were contracted for their joint benefit, and the needs of the minor children. These considerations must include the financial implications of the exercise of such power and the needs of the minor children for a suitable place to live in.

(4) The court considered that the appropriate time to review the matter again and determine whether the property ought to be sold is when the appellant reaches 55 years of age as he will then be entitled to withdraw all his moneys in the CPF account, and there will be no need to repay to the CPF the moneys which had been taken out of his account to pay for the property. The order of court was therefore varied to reflect this.

Legislation referred to
Interpretation Act (Cap 1, 1985 Ed) s 27
Women's Charter (Cap 353, 1985 Ed) s 106

KS Rajah for the appellant.
BJ Lean for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): This was an appeal by the appellant against an order by Mr Justice AP Rajah on 7 November 1988 that the matrimonial home at 612 Telok Blangah Road #03-03, Fairways, Singapore 0410 be not sold until the second child of the marriage, Charlene Lim Yu-Shan, who is the younger of two daughters, reaches the age of 21 years.

The marriage between the parties was dissolved in May 1987 on an uncontested petition and by consent the respondent, who was then the petitioner, was given custody, care and control of the two daughters of the marriage. The elder daughter was born in July 1978 and the younger daughter who was referred to in these proceedings was born on 9 September 1982.

By consent, several prayers by the respondent were adjourned for determination in chambers. These prayers were:

(a) that the exclusive rights to possession of the matrimonial home be granted to the respondent and the children and that the appellant be excluded therefrom;
(b) that the appellant do continue to pay towards the purchase price of the matrimonial home;
(c) that the appellant pay maintenance towards the upkeep of the matrimonial home and the issues of the marriage.

At the first hearing of these ancillary matters on 5 February 1988, the appellant asked that the matrimonial home be sold while the respondent asked that the property be transferred to her. In so far as that matter is concerned, the learned judge made an interim order on the following terms:

(a) that the matrimonial home be not sold then;
(b) that the exclusive rights to possession of the matrimonial home be granted to the respondent and the two children of the marriage and the appellant be excluded therefrom;
(c) that the respondent continue payment of the mortgage instalments until further notice with liberty to apply; and
(d) that the matter be reviewed in six months.

The appellant appealed against such part of the decision as decided that the respondent should retain exclusive possession of the matrimonial home, but withdrew the appeal later, presumably after realizing that this was only an interim order and that the matter would be reviewed in six months' time. Before the matter came up for review in the normal course, the appellant filed a summons-in-chambers on 26 August 1988 applying for an order for disposal of the matrimonial home and the proceeds of sale thereof, and he filed an affidavit in support. He offered, in effect, to pay a sum of $20,000 to-

wards the purchase of alternative accommodation for the respondent and the two daughters. In return, he sought an order that the matrimonial home be sold; that, out of the proceeds of sale there be paid: (i) to the respective accounts of the appellant and the respondent with the CPF Board all moneys withdrawn by them respectively for the purchase of the property plus interest thereon; (ii) any moneys due and owing to Citibank NA on the loans obtained for the purchase of the property, and (iii) legal costs incurred in the sale of the property, and that any remaining balance of the proceeds of sale be divided equally between the appellant and the respondent.

The respondent filed an affidavit in reply on 15 September 1989. It challenged several allegations in the appellant's affidavits; but the material fact shown by her affidavit was that a sale of the matrimonial home at the time, while it would enable re-payments to be made to the appellant's CPF account of more than $200,000 and to the respondent's CPF account of only $70,000, might not leave any surplus after payment of the other debts.

The whole question of the matrimonial home and the appellant's application made by way of summons-in-chambers finally came on for hearing before Mr Justice AP Rajah on 7 November 1988. At the conclusion of the hearing, the learned judge ordered that the matrimonial home be not sold until the second child Charlene Lim Yu-Shan reaches the age of 21 years, and that thereafter the parties be at liberty to apply. This would mean in effect that the property would not be sold until after September 2003, and, until then, the respondent and the daughters would have exclusive possession and enjoyment of the matrimonial home. The appellant appealed to the Court of Appeal against this order.

Before us, it was contended by appellant's counsel that the learned judge did not give due consideration to the appellant's proposals, but it was clear to us on a careful reading of the grounds of decision that he had considered them carefully, to the extent of calculating to the extent possible the impact and consequences of an acceptance of the proposals. The appellant's main contention was in fact that the learned judge was wrong in law in making his order because s 106 of the Women's Charter (Cap 353, 1985 Ed), read together with s 27 of the Interpretation Act (Cap 1, 1985 Ed), requires the court to order a sale of matrimonial property and to divide the proceeds of sale between the parties, or alternatively to dismiss an application. Section 106 of the Women's Charter, so far as relevant, reads as follows:

> (1) The Court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceedings of sale.
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> (2) In exercising the power conferred by subsection (1) the court shall have regard to —
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> (a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
> (b) any debts owing by either party which were contracted for their joint benefit; and
> (c) the needs of the minor children (if any) of the marriage,
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> and, subject to those considerations, the court shall incline towards equality of division.

Section 27(1) of the Interpretation Act reads as follows:

> Where a written law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

It was argued by appellant's counsel that these sections not only confer a power on the court, but that on a true construction they also impose on the court a duty to exercise the power as occasion requires, that the occasion indeed required it, and that therefore the learned judge could not postpone the final determination of this question until 2003. No relevant authorities were cited to us in support of this novel proposition. We rejected this argument. In our opinion, it is not possible to read into these sections the construction which the appellant has placed upon them. Under s 106(1) of the Women's Charter the court has power '*when granting a decree of divorce, judicial separation or nullity of marriage*' to order a division of matrimonial assets between the parties to the marriage. There is nothing in that subsection which makes it mandatory that the power shall be exercised on the making of the appropriate decree. That being so and by virtue of s 27(1) of the Interpretation Act, the court may exercise that power '*from time to time as occasion requires*'. Plainly, the court may defer the exercise of such power to a later date, if the circumstances warrant it. In this connection, the court is required under s 106(2) to have regard to, inter alia, (i) the debts owing by either party which were contracted for their joint benefit and (ii) the needs of the minor children, and these considerations must, in our opinion, include the financial implications of the exercise of such power and the needs of the minor children for a suitable place to live in. In this case, the learned judge took into account these two considerations and came to the conclusion, and, in our view, rightly, that an order for division of the matrimonial home ought not be made at the time. Indeed, having regard to the circumstances in the case we do not see how he could really order a sale as urged by the appellant.

Appellant's counsel drew the court's attention to the undisputed fact that the appellant contributed more in funds to the purchase of the matrimonial home than the respondent. In our opinion, this would really be a relevant consideration only if the court decided to exer-

cise its power under s 106 to divide the property or the proceeds of sale of the property. In that case, a proper account could be taken of the respective contributions in cash or in services. In so far as they might have been indirectly relevant to the issue, the learned judge clearly took this consideration into account, as could be seen from his very carefully considered judgment.

Although it was not a point which was pressed by the appellant, we were of the view that the waiting period (before the matter could be considered again) was unnecessarily long. One of the two main reasons which made the learned judge decide that the matrimonial home should not be sold until the youngest child attains the age of 21 was the fact that if the property were to be sold then, the proceeds thereof would not be sufficient to meet all the payments required to be made, including the repayment to the appellant's CPF account the amount withdrawn which amounted to approximately $200,000. However, when the appellant reaches the age of 55 (in about six years' time) he will be entitled to withdraw all his moneys in the CPF account, and there will be no need to repay to the CPF all the moneys which the appellant had taken out of his CPF account to pay for the property. In our judgment that would be an appropriate point in time to review the matter again and determine whether the sale of the property ought to be made. We therefore varied the order of court of 7 November 1988 to reflect this. As we considered that the appellant had not succeeded on the grounds in his petition of appeal, we awarded the respondent one-half of her costs in the appeal.

Appeal allowed.

Solicitors: *B Rao & KS Rajah; BJ Lean.*

Reported by *Zarinah Marican*

Muhd Munir v Noor Hidah and other applications

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NOS 253 OF 1990, 336 OF 1990, 466 OF 1990 AND 705 OF 1990
CHAN SEK KEONG J
25 OCTOBER 1990

Islamic Law — Jurisdiction of Syariah Court — Custody of Muslim children — Conflict of jurisdiction between High Court and Syariah Court — Whether the Syariah Court has exclusive jurisdiction — Distinction between jurisdiction and power — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 16(1) — Administration of Muslim Law Act (Cap 3, 1985 Ed), ss 35(1) & 52(3)(c)

Statutory Interpretation — Jurisdiction — Conflict in statutory jurisdiction between the High Court and Syariah Court in respect of custody of Muslim children — High Court's jurisdiction to be excluded when the Syariah Court has jurisdiction — Whether Syariah Court does have jurisdiction — Distinction between jurisdiction and power — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 16(1) —Administration of Muslim Law Act (Cap 3, 1985 Ed), ss 35(1) & 52(3)(c)

Family Law — Custody of Muslim children — Jurisdiction and powers of the High Court and Syariah Court to make custody orders — Guardianship of Infants Act (Cap 122, 1985 Ed) — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 16(1) — Administration of Muslim Law Act (Cap 3, 1985 Ed), ss 35(1) & 52(3)(c)

Words and Phrases — 'Jurisdiction' — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 16(1)

Words and Phrases — 'Power'

These four cases raise a common question as to the jurisdiction of the High Court to hear custody applications under the Guardianship of Infants Act (Cap 122, 1985 Ed) by Muslim parents. The principal area of contention was how s 16(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) ('SCJA') which provides that the High Court has no jurisdiction over civil proceedings within the jurisdiction of the Syariah Court, is to be read with s 52(3)(c) of the Administration of Muslim Law Act (Cap 3, 1985 Ed) ('AMLA') under which the Syariah Court is empowered to make custody orders. The jurisdiction issue is further complicated by a seeming contradiction in s 35 of AMLA which sets out the Syariah Court's jurisdiction in respect of certain matrimonial matters, but omits mention of custody.

In OS No 253 of 1990, the parties were divorced by decree of the Syariah Court which also provided that the issue of custody be referred to the High Court for determination at the request of both parties. The plaintiff-father then sought custody in the High Court. The defendant contended that the Syariah Court has jurisdiction with respect to custody proceedings under the AMLA, and as such the High Court's jurisdiction is excluded by s 16(1) of the SCJA. The plaintiff relied on the case of *Shaikh Salleh* v *Mariambee*[1] and submitted that AMLA does not affect the operation of the SCJA which is a statute of general application.

In OS No 336 of 1990, the parties were divorced by mutual agreement before a kadi and the divorce and a custody order were then registered at the Syariah Court. The plaintiff-